

OAL CHECKLIST REGULAR APA RULEMAKING

OAL File No. _____ - _____ - _____

Agency: _____

Reviewer: _____

Due Date: _____

(All citations are to the Government Code, unless otherwise specified. CCR means California Code of Regulations.)

REQUIREMENT

OK?

PROBLEMS

1. FORM 400 (1 CCR 6)	
Name of agency set out in AGENCY box?	
Subject/topic described in SUBJECT or TOPIC box? (1 CCR 6(b)(1))	
Rulemaking action submitted within 1 year of publication date of notice? (11346.4(b)) Extended per B & P 313.1(e)?	
All SECTIONS AFFECTED and TITLES listed? (1 CCR 6(b)(2))	
TYPE OF FILING correctly indicated? (1 CCR 6(b)(3))	
RESUBMITTAL FILING ONLY: Previously disapproved regulation resubmitted within 120 days of agency's receipt of decision of disapproval? Or, extension granted by Director for good cause? (11349.4(a)) Otherwise, within 1 year of publication date of notice? (11346.4(b)) Identify prior file by date of submission? (11349.4(c)) Specify parts of prior file incorporated into the resubmittal or submit copy of prior file if returned? (11349.4(c); 1 CCR 84)	
CERTIFICATE OF COMPLIANCE FILING ONLY: <ul style="list-style-type: none"> Submitted to OAL within 120 days of effective date of emergency regulations? (11346.1(e)) <i>Or</i>, special statute for more or less time? B.3 on Form 400 marked, or appropriate certification in file? (11346.1(e)) 	

EFFECTIVE DATE designated? If early effective date requested, good cause shown? (11343.4(c))	
Notice to, or review, consultation, approval, or concurrence by another agency required? (1 CCR 6 (b)(6))	
Name of CONTACT PERSON and TELEPHONE number? (1 CCR 6(b)(7))	
SIGNATURE by agency head or person listed in a signed delegation order in rulemaking file or on file with OAL? Dated? Typed name/title? (11343(f), 1 CCR 6(b)(8))	
2. REGULATION TEXT:	
<p>Final regulation text attached to original and six copies of Form 400? (11343, 1 CCR 6)</p> <ul style="list-style-type: none"> • Document(s) incorporated by reference attached to original for filing with Secretary of State? (Six duplicate copies of document incorporated by reference <i>not required</i> for formal publication reasonably available from commonly known or identified source.) (1 CCR 20(d)) • Regulation section number(s) fit into CCR? • Underlying text (and Authority and Reference cites) match what is printed in CCR? • Final text shows changes to CCR in underline/ strikeout format, including Authority and Reference cites? (1 CCR 8) • Does final text (including any substantial changes) match text expressly adopted by board or com.? • Building Standard? (OSHA standards are not Building Standards. (H & S Code 18909(j).) Building Standards Commission contacted? See H & S Code 18942.1. (11346.1(c)) 	
3. NOTICE OF PROPOSED RULEMAKING	
<p>HEARING: Time, place, nature of proceeding included? (11346.5(a)(1))</p> <ul style="list-style-type: none"> • If no hearing scheduled, is information on opportunity to request one included? (11346.5(a)(17)) • Request included in file?)11346.8(a); 11347.3(b)(6)) 	

<ul style="list-style-type: none"> • If hearing timely requested, notice mailed to the extent practicable? (11346.8(a)) 	
WRITTEN COMMENT PERIOD: Date written comment period closes included? At least 45 days or other time period specified by statute) between publication date and hearing/close of written comment period? (11346.4(a); 11346.5(a)(15))	
AUTHORITY and REFERENCE: citations included? (11346.5(a)(2); 1 CCR 14)	
INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW <ul style="list-style-type: none"> • Directly related existing laws and regulations and effect of proposed regulations concisely and clearly summarized? • Broad, and, if appropriate, specific objectives explained? • In plain English? • Format similar to Legislative Counsel digest? (11346.5(a)(3)) • Significant difference from existing, comparable federal regulation or statute described? Citation to federal regulation or statute included? (11346.5(a)(3)) • Document incorporated by reference into the reg. listed by title and date? (1 CCR 20(c)(3)) 	
ADOPTING OR AMENDING REGULATIONS MANDATED BY FEDERAL LAW OR REGULATIONS: If so, is a statement included that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found? (11346.2(c))	
OTHER STATUTORY REQUIREMENTS: Specific to agency or type of regulation? (11346.5(a)(4))	
LOCAL MANDATE: Determination (policy or expenditure) included? If “yes,” does mandate require reimbursement? (11346.5(a)(5))	
FISCAL IMPACT (11346.5(a)(6)) <ul style="list-style-type: none"> • Cost to any local agency or school district for which 17500-17630 require reimbursement? • Other non-discretionary cost or savings imposed upon local agencies? • Costs or savings to any state agency? • Costs or savings in federal funding to the state? 	

EFFECT ON HOUSING COSTS: Statement re significant effect on housing costs, if initially determined? (11346.5(a)(12))	
SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE? (11346.3(a); 11346.5(a)(7); 11346.5(a)(8)) <ul style="list-style-type: none"> • If proposal <i>may have</i> such an impact, does notice: <ul style="list-style-type: none"> • State “initial” determination? • Identify types of businesses affected? • Describe projected compliance requirements? • Solicit proposed alternatives using boilerplate at 11346.5(a)(7)(C)? (11346.5(a)(7)) • If proposal <i>will not have</i> such an impact, does notice state “initial” determination? (11346.5(a)(8)) 	
ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES: Statement of results of assessment regarding creation/elimination of CA jobs and creation of new, or elimination/expansion of existing CA businesses included? 11346.5(a)(10))	
COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS: Statement of all known cost impacts a representative person or business would incur in reasonable compliance included? If not, boilerplate “not aware of any cost” statement specified in 11346.5(a)(9) included? (11346.5(a)(9))	
BUSINESS REPORT: If a regulation requires a report, is there a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to business? (11346.5(a)(11); 11346.3(c))	
SMALL BUSINESS: Statement that proposed action does/does not affect small businesses? Reason for “does not affect” determination? (1 CCR 4)	
ALTERNATIVES STATEMENT: Statement that a least burdensome reasonable alternative determination must be made? (11346.5(a)(13))	
CONTACT PERSON: Name and telephone number of agency representative and designated backup contact person? (11346.5(a)(14))	

AVAILABILITY STATEMENTS regarding: <ul style="list-style-type: none"> • Availability of express terms? • Statement that an initial statement of reasons is prepared and available? • Statement re availability of information upon which proposal is based (rulemaking file)? (11346.5(a)(16); 11346.5(b); 11346.2(a)) 	
15-DAY CHANGES: Statement about 15-day availability of substantial changes to the original proposal? (11346.5(a)(18))	
FINAL STATEMENT OF REASONS: Statement explaining how to get a copy of the final statement of reasons? (11346.5(a)(19))	
INTERNET ACCESS: Statement explaining how materials published or distributed through the agency's Internet website, if the agency has one, can be accessed? (11346.4(a)(6); 11346.5(a)(20))	
4. STATEMENT RE MAILING OF 45-DAY NOTICE:	
<ul style="list-style-type: none"> • Included? Adequate? (11346.4(a)(1)-(4); 1 CC86)) 	
5. TEXT OF REGULATIONS AS ORIGINALLY PROPOSED	
<ul style="list-style-type: none"> • Included in file? (11347.3 (b) (10)) • Underlying text, if any, matches existing reg. Text printed in the CCR? (11346.2 (a) (3)) • All proposed changes to the CCR including Authority and Reference citations in underline/italic, strikeout format? (11346.2 (a)(2) and (3)) 	
6. INITIAL STATEMENT OF REASONS (ISR)	
Included in rulemaking file? (11347.3(b)(2)) ISR contents: <ul style="list-style-type: none"> • Specific purpose of each proposed adoption, amendment, repeal? (11346.2(b)(1)) • Rationale/reasonable necessity for each proposed adoption, amendment, repeal. (11346.2(b)(1)) • Reasons for mandating specific actions or procedures or specific technologies or equipment? (11346.2(b)(1)) • Each regulation provision covered? (1 CCR 10(b)) 	

<ul style="list-style-type: none"> • Each study, report, document relied upon, if any, identified? (11346.2(b)(2)) • A description of reasonable alternatives to the reg. that were considered, if any, and reasons for rejecting them? (11346.2(b)(3)(A)) • If specific actions, procedures, technologies, or equipment prescribed, does ISR demonstrate use of a performance standard was considered? (11346.2(b)(3)(A); 11340.1)) • Description of reasonable alternatives considered that would lessen impact on small business? (11346.2(b)(3)(B)) • Evidence relied upon to support initial determination in the notice that the regulation will not have a significant adverse economic impact on business? (11346.2(b)(4)) • Agency under Cal-EPA, Resources Agency or Fire Marshal: description of efforts to avoid unnecessary duplication or conflict with CFR included? Required finding to adopt regulation different from CFR included? (11346.2(b)(5)) 	
<p>7. TRANSCRIPT, RECORDING, OR MINUTES</p>	
<ul style="list-style-type: none"> • Included in rulemaking file? (11347.3(b)(8)) • Transcript or recording verbatim? (1 CCR 90(b)) • Minutes sufficiently detailed to indicate objections and recommendations made? (1 CCR 90(c)) • Demonstrate that board or commission with rulemaking authority adopted the regulation(s) after complying with public availability requirements of 11346.8? (11346.8, 11347.3(b)(8); 1 CCR 90(a)) • If scheduled public hearing continued or postponed, adequate notice of resumption? (11346.8(b)) 	
<p>8. POST-NOTICE MODIFICATIONS TO TEXT</p>	
<p>Differences between originally noticed text and text submitted to OAL? (11346.8(c)) If none, skip to Updated Informative Digest.</p> <ul style="list-style-type: none"> • All changes <i>nonsubstantial</i> (1 CCR 40) or <i>solely grammatical</i>? (11346.8(c)) If yes, skip rest. • All <i>substantial</i> changes (1 CCR 40) <i>sufficiently related</i> to original proposal? (11346.8(c); (1 CCR 42) If no, new 45 day notice required on changes not sufficiently related. (11346.8(c)) 	

<p>If yes, continue.</p> <p>NOTICE OF 15 DAY COMMENT PERIOD</p> <ul style="list-style-type: none"> • Included in rulemaking file? • State period within which comments will be received? (1 CCR 44(a)) <p>MODIFIED TEXT OF REGULATION</p> <ul style="list-style-type: none"> • Included in rulemaking file? (11347.3(a)(10)) • Show full text of regulation as originally proposed with proposed changes clearly indicated? (1 CCR 44; 1 CCR 46) <p>STATEMENT OF MAILING</p> <ul style="list-style-type: none"> • Included in rulemaking file? (11347.3(a)(9)) • Confirm that agency complied with 1 CCR 44: <ul style="list-style-type: none"> ▪ State date notice and modified text mailed? (1 CCR 44(b)) ▪ State notice <i>and</i> text mailed to those listed in 1 CCR 44(a)? ▪ State beginning and ending date of public availability? (1 CCR 44(b)) <p>If no persons to mail to, statement to confirm this and state beginning and ending dates of public availability? (1 CCR 44(c) & (d))</p>	
<p>9. UPDATED INFORMATIVE DIGEST</p>	
<ul style="list-style-type: none"> • Included in rulemaking file? • Update of summary of laws and regulations directly related to proposed rulemaking action? • Update of summary of effect of proposed rulemaking action? (11346.9(b)) 	
<p>10. FORM 399 (FISCAL IMPACT)</p>	
<ul style="list-style-type: none"> • STD Form 399 included in rulemaking file? • Properly filled out and signed by Agency Secretary or if rulemaking agency is not under an Agency Secretary by the highest ranking official in agency? (SAM 6680) • DOF concurrence required? (SAM 6660) • Computations leading to dollar estimate and supporting data included in rulemaking file? (SAM 6622) (11349.1(d)(1)) • If regulation results in reimbursable cost to local agency/school district, OAL must disapprove unless information specified in 11349.1(d)(3) on source of funds is included in rulemaking file. 	

11. FINAL STATEMENT OF REASONS (FSR)	
<ul style="list-style-type: none"> • Included in rulemaking file? • Update of information in ISR? (11346.9(a)(1)) • Update of material relied upon by agency? Made available? • Determination whether regs impose mandate upon local agencies/school districts? (11346.9(a)(2)) <ul style="list-style-type: none"> • If "yes," statement whether mandate is reimbursable under 17500-17630? If "not reimbursable," reason as to why? • Determination, with supporting evidence, that no alternative would be more effective or as effective and less burdensome to affected persons? (11346.9(a)(4)) • If document is incorporated by reference into the final regulation: <ul style="list-style-type: none"> ▪ Was document available upon request from agency, or reasonably available from commonly known or specified source?(1 CCR 20(c)(2)) ▪ Demonstration in FSR that publication of incorporated document in full in CCR would be cumbersome, unduly expensive, or otherwise impractical? (1 CCR 20(c)(1)) ▪ Incorporated document identified in 45 day or 15 day notice? (1 CCR 20(c)(3)) • SUMMARY of each comment received during a comment period specifically directed at proposed regulation changes then available for comment or at procedure followed? (11346.9(a)(3)) • RESPONSE included explaining how proposal amended to accommodate comment OR explaining <i>a reason for rejecting comment</i>? (11346.9(a)(3)) • Reasons included for rejecting proposed alternatives to lessen impact on small business? (11346.9(a)(5)) • Comments from (1) Trade & Commerce and (2) OPR/OSBA separately identified and responded to (including providing a basis why those comments were rejected, if applicable)? (11347.6) 	
12. OTHER MATERIAL IN RULEMAKING FILE	
Petition, if any, proposing regulatory change? (11340.7; 11347.3(b)(1))	

<p>Written comments, factual information, studies and reports submitted <i>in connection with</i> the adoption, amendment, or repeal of a regulation. (11347.3(b)(6))</p> <ul style="list-style-type: none"> • Material received during 45 day comment period? • Material received during 15 day comment period(s)? • Material received in connection with proposed rulemaking at other times? (11347.3(b)(6)) 	
All material relied upon by the agency included in the rulemaking file? (11347.3(b)(7))	
Any other information, statement, report or data which agency is required to consider or prepare included in file? (11347.3(b)(11))	
<p>Was all material relied upon made available for comment? If material relied upon was not identified in ISR, <i>or</i> was not otherwise identified and made available, was material made available for at least 15 days as required by 11347.1?</p> <ul style="list-style-type: none"> • Notice included in rulemaking file? • Notice identify added document? • Location? • Statement confirming compliance with notice requirements adequate? See 11347.1(e) or (f). 	
13. TABLE OF CONTENTS/CERT. OF CLOSURE	
Table of Contents/Index identify each item in rulemaking file? (11347.3(b)(12))	
<p>Affidavit/Declaration under penalty of perjury stating:</p> <ul style="list-style-type: none"> • Rulemaking file is closed and complete? • Date file closed? (11347.3(b)(12)) • Is closure date later than date of all documents in the rulemaking file? 	
14. SUBSTANTIVE REQUIREMENTS	
<p><i>AUTHORITY</i> (11349(b), 11342.1, 11342.2; 1 CCR 14)</p> <ul style="list-style-type: none"> • Citations specific, accurate, complete? • Specific authority to impose fine or imprisonment? (11145) • Fire and panic safety regulations approved by State Fire Marshal? (11359) • Does regulation alter, amend, or enlarge a statute? (1 CCR 14(c)) 	

<p><i>REFERENCE</i> (11349(e); 1 CCR 14(b))</p> <ul style="list-style-type: none"> • Citations specific, accurate, complete? <p><i>CONSISTENCY</i> (11342.2, 11349(d))</p> <ul style="list-style-type: none"> • Statutes enforced or administered by agency? • Permit Reform Act? (15374-15378) • Collection of social security number from applicant for issuance or renewal of license? (Family Code 17520(d)) • Public Records Act? (6250-6270) • Information Practices Act? (Civil Code 1798) • Bagley-Keene Open Meeting Act? (11120-11132) • CEQA? (Public Resources Code 21000, 21080.5; 14 CCR 15000, 15250, 15307, 15308) • <i>Other applicable statutes or regulations?</i> <p><i>CLARITY</i> (11349(c); 1 CCR 16)</p> <ul style="list-style-type: none"> • Presumed unclear? See 1 CCR 16. • Title of a document (including a form) incorporated by reference clearly set out in the text? Specific identification of the part of the document incorporated, if appropriate? (1 CCR 20(c)(5)) • Statement in text that a document, or part, is incorporated by reference? (1 CCR 20(c)(4)) • Statement in text of revision date (or other specific identifier) of the particular version incorporated? <p><i>EXCEPTION:</i> No date required if authorizing statute requires adoption/ enforcement of incorporated provision and any subsequent amendments. (1 CCR 20(c)(4))</p> <p><i>NONDUPLICATION</i> (11349(f), 11346.2(b)(5); 1 CCR 12)</p> <p><i>NECESSITY</i> (11349(a); 1 CCR 10)</p> <ul style="list-style-type: none"> • Does record demonstrate by substantial evidence that each provision is reasonably necessary to effectuate the purpose of the provision of law it implements, interprets, or makes specific? • Scientific portions of regulation peer reviewed? (Health & Safety Code 57004) 	
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